Appeals Committee with the discretion to waive the forum fee established in CBOE Rule 17.50 if the BCC or the Appeals Committee determines that the person charged is guilty of one or more of the rule violations alleged and the sole disciplinary sanction imposed by the BCC or the Appeals Committee is a fine which is less than the total fine initially imposed for the violation. By allowing the BCC and the Appeals Committee to waive the forum fees, the Commission believes that the proposal should enhance the fairness of the CBOE 's disciplinary system and help to ensure that appropriate and equitable discipline is imposed under CBOE Rule 17.50.

The Commission believes that it is reasonable for the Exchange to amend CBOE Rule 17.50 to provide that the Exchange department which commenced an action under CBOE Rule 17.50, the person charged, the President of the Exchange, and the Board may require a review by the Board of any determination of the Appeals Committee under CBOE Rule 17.50 by proceeding in the manner provided in CBOE Rule 19.5, ''Review.'' The Commission notes that the provision is similar to the current CBOE rule governing requests for review of BCC determinations.

Finally, the Commission believes that the CBOE's proposal to make nonsubstantive changes to CBOE Rule 17.50(g)(1) is consistent with the Act because it is designed to clarify the rule.

The Commission finds good cause for approving Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to establish procedures applicable to appeals of fines imposed pursuant to CBOE Rule 17.50(g)(7). By providing members with a means to appeal such fines, the Commission believes that the procedures set forth in Amendment No. 1 should help to ensure that fines are imposed fairly under CBOE Rule 17.50(g)(7). Accordingly, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 on an accelerated basis.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–CBOE–94–46) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

[12] 15 U.S.C. 78s(b)(2) (1982).

[13] 17 CFR 200.30–3(a)(12) (1994).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2907 Filed 2–6–95; 8:45 am]

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[Release No. 34–35314; File No. SR–NASD–94–10]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Procedures for Large and Complex Arbitration Cases

February 1, 1995.

On January 31, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'')[1] a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2], and Rule 19b–4 thereunder.[3] The rule change amends the Code of Arbitration Procedure (''Code'')[4] by amending Part III, Sections 43[5] and 44[6] and adding new Section 46 to provide procedures for large and complex arbitration cases as a one year pilot program.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 34998, Nov. 22, 1994) and by publication in the **Federal Register** (59 FR 61010, Nov. 29, 1994). Two comment letters were received.[7] This order approves the proposed rule change.

I. Background

The Code governs arbitration of any dispute arising out of or in connection with the business of any NASD member, or arising out of the employment or termination of employment of associated persons with a member, other than disputes involving the insurance business of any member which is also an insurance company, if the dispute is: (1) Between or among members; (2) between or among members and associated persons; (3) between or among members of associated persons and public customers, or others; or (4) between or among members, registered clearing agencies with which the NASD has entered into an agreement to use the NASD's arbitration facilities and procedures, and participants, pledges or other persons using the facilities of a registered clearing agency.[8]

The Code contains specialized procedures for certain categories of cases. Part II of the Code[9] contains procedures applicable solely to industry and clearing controversies. Section 13 of the Code[10] contains certain specialized procedures applicable to controversies involving public customers and associated persons or members if these controversies involve a dollar amount not exceeding $10,000.

The NASD submitted this rule change because it believes that certain large and complex cases may require special management beyond that currently afforded by the Code. Therefore, the NASD is adding new Section 46 to the Code setting forth procedures for handling and managing large and complex cases. In part, some of the procedures contain certain features of rules adopted by the American Arbitration Association (''AAA'') for processing large and complex cases. Section 46 also contains certain features of the arbitration rules of the National Futures Association. Many of the procedures in Section 46 also are provided elsewhere in the Code; however, the NASD believes that grouping these procedures together in a

[1] The NASD initially submitted the proposed rule change on February 15, 1994. Amendment No. 1, submitted on October 12, 1994, clarified various aspects of the proposed rule change, altered the manner in which arbitrators are selected to a panel and altered the disclosures required with respect to unsuccessful settlement discussions. Amendment No. 2, submitted on November 18, 1994, amended proposed Section 46(g) to clarify that arbitrators may, at their own initiative, issue an award accompanied by a statement of reasons or basis of award and that parties may specifically agree to require arbitrators to issue a statement of reasons when they issue an award. Amendment No. 3, submitted on December 12, 1994, and Amendment No. 4 were minor technical amendments. See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Over-the-Counter Regulation, SEC (December 9, 1994) (available in Commission's Public Reference Room); Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark Barracca, Branch Chief, Over-the-Counter Regulation, SEC (January 31, 1994) (available in Commission's Public Reference Room).

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4.

[4] NASD Manual, Code of Arbitration Procedure, (CCH) ¶¶ 3701 *et. seq.*

[5] NASD Manual, Code of Arbitration Procedure, Part III, Sec. 43 (CCH) ¶ 3743.

[6] NASD Manual, Code of Arbitration Procedure, Part III, Sec. 44 (CCH) ¶ 3744.

[7] See letter from Cliff Palefsky, Esq., Chairman, Securities Industry Arbitration Committee, National Employment Lawyers Association (''NELA''), to Jonathan G. Katz, Secretary, SEC, dated December 12, 1994 (''NELA Letter''); letter from Seth E. Lipner, Esq., Deutsch & Lipner, to Jonathan G. Katz, Secretary, SEC, dated December 22, 1994 (''Lipner Letter'').

[8] NASD Manual, Code of Arbitration Procedure, Part I, Sec. 1 (CCH) ¶ 3701.

[9] NASD Manual, Code of Arbitration Procedure, Part II, Secs. 8–11 (CCH) ¶ 3708–3711.

[10] NASD Manual, Code of Arbitration Procedure, Part III, Sec. 13 (CCH) ¶ 3713.

single section serves to emphasize the utility of these procedures for large and complex cases.

The NASD stated that the procedures are intended to encourage the parties to come to an agreement on the rules that will govern the disposition of the matter. Under new Section 46, all cases that are eligible for the procedures contained in that Section will be scheduled for an administrative conference in order to determine whether the parties can agree on ways in which the case should be administered. Beyond the mandatory administrative conference, however, all parties to an eligible matter must agree to continue with a proceeding under the provisions of Section 46; otherwise, the Code provisions generally applicable to arbitration matters will govern the proceeding. The NASD stated that most of the provisions of the proposed rules will allow the parties to adopt an alternative procedure of their own creation if they can agree on such procedures.

Section 46 includes procedures for an administrative conference, the appointment of arbitrators, and a preliminary hearing. The provisions of the rule change are described in more detail below.

Finally, the rule change is a one year pilot program. It will remain in effect for cases filed within one year from the date of effectiveness (ninety days after the date of this order) unless the NASD Board of Governors authorizes and the Commission approves its modification or extension. During the pilot program the NASD will monitor the implementation and utility of the rule change in order to determine whether to add it permanently to the Code.

II. Substantive Provisions

A. Fees

Sections 43 and 44 of the Code, which specify the schedule of fees for customer disputes and industry disputes, respectively, have been amended to add subsections specifying that the fees and deposits for matters submitted for arbitration under the large and complex case rules shall be the fees and deposits otherwise specified for claims over $5,000,000. As discussed further below in Section D., parties may be assessed additional fees to compensate arbitrators. Parties may condition their acceptance of the large and complex case rules on an agreement with the NASD governing these fees.

B. Applicability

Section 46(a) specifies that the procedures for large and complex cases will be applicable to disputes, claims or controversies (''eligible matters'') in which the claim or counterclaim is at least $1 million, including punitive or exemplary damages, but exclusive of interest costs or fees, or in other cases in which the parties agree that the matter should be subject to the procedures. This provision permits parties with claims of less than $1 million to have their matter heard pursuant to these procedures if, in their judgment, it would be advantageous to do so.

Section 46(a) requires an eligible matter to be scheduled for an administrative conference. As noted above, unless all parties agree, the large and complex case rules will not govern arbitration of the matter following the administrative conference. The procedures for an administrative conference, discussed in detail below, bring the parties together to consider the various issues involved in managing the matter and to determine if any agreement can be reached on such issues. If the parties fail to agree on procedures, they are not required to continue under the large and complex case rules; the rules are not intended to apply to cases if a party does not wish for them to apply. In order to assist parties in deciding whether to proceed under the large and complex case rules, the NASD will provide all parties with an educational pamphlet.[11] The pamphlet will discuss issues that parties should address in a written document prior to submitting a matter for resolution under the large and complex case rules, including, among other issues, arbitrator selection and compensation, discovery and whether an award will include a statement of reasons. Thus, the rule change does not permit a selection of the large and complex case rules in a predispute arbitration agreement. Rather, it specifically provides that any agreement to proceed under such rules will be made at or after an administrative conference.

If all parties agree to continue the proceedings under the large and complex case rules, Subsection (a) provides that the agreement becomes binding on the parties once the last arbitrator is appointed. This requirement reflects the NASD's view that parties devote substantial resources to formulate procedures to govern a particular matter. In addition, substantial effort and commitment is required to appoint arbitrators. A party could be severely disadvantaged if it devoted time and resources to arbitrating a matter under the large and complex case rules, only to confront unilateral rejection of the agreed-upon procedures later in the process.

In this regard, the NASD has stated that if, at any point after such an agreement under Section 46 (a)(2) and (a)(3) becomes binding, a member of the NASD or an associated person refuses to proceed with the arbitration of the matter and, instead seeks to dismiss the action and refile it in court, another arbitration forum, or with the NASD as an ordinary arbitration action, the NASD would regard this action as a violation of the member's obligation to arbitrate such matters under the Code subjecting the member of associated person to potential disciplinary action. Further, the NASD has stated that any failure by any party to proceed after the agreement becomes binding may be addressed under various provisions of the Code which permit the arbitrators to issue orders, penalize parties and make awards without the attendance or participation of a party.[12]

C. Administrative Conference

Section 46(b) provides for an administrative conference of the parties to an eligible matter to discuss, among other things, the claim and amount in dispute, arbitrator preferences, procedures, discovery, scheduling and settlement. In its filing with the Commission, the NASD indicated that this provision is intended to bring the parties together to air and discuss all issues related to the arbitration, to exchange information on procedural and scheduling matters, and to reach agreement on as many procedural and scheduling issues as possible in order to facilitate the orderly and expeditious resolution of the matter. The filing notes that if it becomes apparent that one or more parties are not amenable to proceeding under the large and complex case rules, the administrative conference will have served its purpose and the matter may proceed under the other provisions of the Code.

The NASD expects that parties will have reviewed the NASD's pamphlet before the administrative conference. Among the topics to be addressed in the pamphlet are the issues that parties should address in a written agreement under Section 46 (a)(2) and (a)(3) prior to submitting a matter for resolution under the large and complex case rules,

[11] See letter dated October 12, 1994, to Mark Barracca, Esq., Branch Chief, SEC, from Suzanne E. Rothwell, Associate General Counsel, NASD (''NASD Letter'').

[12] See *e.g.*, NASD Manual, Code of Arbitration Procedure, Part III, Secs. 29, 32, 33 and 35 (CCH) ¶¶3729, 3732, 3733 and 3735.

including: (1) Arbitrator selection; (2) additional fees for arbitrator compensation; (3) whether the parties will use the prehearing discovery rules included in these large and complex case rules, whether they will use the prehearing discovery rules elsewhere in the Code, or some other prehearing procedures; and (4) whether the parties are contracting for the arbitrators to provide a written statement of reasons. The pamphlet also will disclose that, if the parties fail to address any of these issues, the issues may need to be resolved by the arbitration department or the arbitrators, as appropriate under the assignment of responsibilities under the large and complex case rules and other Code provisions. The pamphlet also will highlight the fact that a significant feature of the large and complex rules is that arbitrators are authorized to dismiss the case, or any part of it, on the written submissions of the parties without any oral hearing.

D. Appointment of Arbitrators

Section 46(c) provides for the appointment of a panel of three arbitrators to hear eligible matters. At least one arbitrator must be an attorney.

The NASD intends to establish a pool of separately qualified arbitrators to hear many of the cases under the large and complex case rules.[13] The NASD also indicated that it will also draw from its regular pool of arbitrators as necessary to fill panels for eligible matters. Moreover, in order to attract arbitrators to serve on panels hearing eligible matters, Section 46 contains a mechanism to provide additional compensation for those arbitrators. Section 46(c)(4) provides that prior to the selection of the arbitrators, the parties may agree to pay, and that the Director of Arbitration has discretion to assess, compensation to be paid to the arbitrators by the parties in addition to the honorarium specified by the Board of Governors. The additional compensation would reflect the magnitude and complexity of the matter arbitrated under the alternate large and complex case rules. Under the provision, the amount of any such additional compensation also must be decided before the selection of the arbitrators. Section 46(a)(4) requires parties to pay arbitrator fees prior to the first hearing or the next scheduled hearing, as applicable.

Under the procedures established by the NASD, the staff member assigned to conduct the administrative conference must discuss the availability of arbitrators with the parties at the administrative conference and obtain the agreement of the parties on how to proceed if availability is a problem. The parties may, for instance, make further proceedings under the large and complex case rules contingent upon the availability of specially qualified arbitrators or upon specific compensation arrangements.

Finally, while the rules contemplate that eligible matters will be heard by panels of three arbitrators, at least one of whom is an attorney, Section 46(c)(1) permits the parties to agree to submit a matter to a single mutually acceptable arbitrator.

A panel may be appointed in one of three ways: (1) Pursuant to the usual procedures in Section 19 of the Code, if the parties cannot agree on another method; (2) pursuant to a procedure set forth in Section 46(c)(3); or (3) pursuant to a procedure agreed to by the parties.

The procedure set forth in Section 46(c)(3) provides that each party simultaneously will be provided with two lists of arbitrators: the first list will be composed of securities industry arbitrators and the second list will be composed of public arbitrators. The lists will include certain biographical information, with other information available on request. Within 20 days of the transmittal of these lists, each party may challenge peremptorily or for cause any or all arbitrators on the lists and must rank the remaining arbitrators on its lists in order of preference with ''one'' (1) indicating the most preferred arbitrator. Any party failing to challenge, rank and return the lists will be considered to have accepted all listed arbitrators.

After receiving the lists from the parties the Director of Arbitration will prepare two consolidated lists (one of public arbitrators and one of industry arbitrators) of the arbitrators by combining the parties' lists of acceptable arbitrators and consolidating the rankings. Under the provision, this is accomplished by preparing a combined list composed solely of those arbitrators acceptable to all parties and then adding the number rankings assigned by each party together to achieve a consolidated rank.

	Party A	Party B	Consolidated rank
Arbitrator #1	1	3	4
Arbitrator #2	3	2	5
Arbitrator #3	4	1	5
Arbitrator #4	2	5	7
Arbitrator #5	5	4	9

In order to ensure that a panel has at least one attorney, the Director will extend the first invitations to the highest ranking attorneys on either list. If each attorney accepts, the NASD will select the attorney who received a higher ranking from a party. Once an attorney has been named to the panel, the Director will continue to extend invitations to arbitrators in the order of their consolidated rank until the panel has been filed by the required number of public and industry arbitrators. Under the provision, if a panel cannot be appointed from the consolidated lists, the remainder of the panel will be appointed under the regular arbitration provision in Section 19 of the Code.

Finally, pursuant to Section 46(c)(3)(E), if a challenge for cause is successful after the appointment of the panel is complete, Section 46(c)(3)(E) permits the Director of Arbitration to reopen the selection process at the point where the last arbitrator was appointed and continue the process as through the challenged arbitrator had never been appointed.

E. Preliminary Hearing

Section 46(d) provides that the arbitrators will convene a preliminary hearing promptly following the appointment of the panel. Once the arbitrators convene the preliminary hearing, the Director of Arbitration will appoint a single arbitrator to preside over the preliminary hearing and the presiding arbitrator will have the power to act on behalf of the panel on any appropriate matter arising before or after the preliminary hearing. The presiding arbitrator will also have unlimited discretion to refer any such matter to the full panel for consideration. Matters which may be brought to the presiding arbitrator for resolution include: stipulations as to uncontested facts, exchanging and premarking exhibits to be offered at the hearing, and the schedule, form, scope and use of sworn statements and depositions. In addition, the presiding arbitrator may consider any other matter ripe for resolution at the prehearing stage, including encouraging medication or other non-adjudicative resolution of the matter.

[13] The NASD has indicated that it intends to identify arbitrators qualified to preside over such cases on the basis of training, experience, varied knowledge and expertise. Qualifications for inclusion in the pool may be based on, among others, the following factors: (1) Attendance and successful completion of course(s) relating to large and complex cases; (2) experience and regular service as an arbitrator; (3) knowledge or expertise in the subject matter or technical aspects of the dispute; (4) length of service as an Association arbitrator; and (5) professional and business expertise.

F. Settlement of Eligible Matters

Section 46(e) also provides for the parties to give arbitrators information about their settlement efforts. The provision states that if an eligible matter is not settled prior to the first hearing date, the parties must submit either a joint statement or individual statements to the arbitrators, setting out a record of the dates and duration of any discussions and the fact that the discussions did not result in settlement, but must not include any statement disclosing the dollar value of any settlement offer or proposal discussed by the parties. The NASD indicated that this subsection is included because it might provide arbitrators with additional information concerning the issues in dispute. The prohibition against disclosing dollar amounts discussed is intended to avoid suggesting dollar values for any award ultimately made by the arbitrators.

G. Management of Proceedings

Section 46(f) sets out general and specific powers granted to the arbitrators to enable them to manage the proceedings. The arbitrators may, without limitation, delegate their powers under subsection (f) to a single arbitrator to be exercised either in the preliminary hearing or at any other time prior to the hearing. The large and complex case rules specifically permit arbitrators to rule on dispositive motions, such as motions to dismiss on any grounds, including the applicability of a statute of limitations, or motions for summary judgment on specific issues such as liability or damages, or on the whole matter. As noted above, the pamphlet will highlight this provision so that parties may determine whether they wish to utilize the large and complex case rules or whether they wish to agree specifically to amend the panel's ability to rule on dispositive motions.

A significant difference between the large and complex case rules and the rules for other cases administered under current Code provisions concerns the prehearing procedures, or ''discovery'' process. The large and complex case rules rely to a significant extent on the parties to bargain for setting the scope of discovery. Absent a specific agreement by the parties in the agreement under Section 46 (a)(2) and (a)(3) to proceed under these rules, parties are to use the procedures in Section 46(f). These procedures differ from the present Code in that depositions and interrogatories are intended to be limited to determining and preserving testimony and facts relevant to the determination of the matter, not for conducting discovery.[14] Further, interrogatories are limited to twenty questions, including parts and subparts. The pamphlet will highlight these and other differences between discovery under the large and complex case rules and discovery under current provisions of the Code and will advise parties that they may agree to modify the discovery rules contained in Section 46(f).

Finally, Section 46(f) authorizes arbitrators to conduct special proceedings as necessary to resolve any such matters before them. Special proceedings may take any form specified by the arbitrators, and may be conducted in person, via teleconference, on written submissions alone, or by any other method.

H. Form Award

Section 46(g) specifies that the award in an eligible proceeding shall be in the form prescribed in Section 41 of the Code. Arbitrators may at their own initiative issue an award that is accompanied by a statement of reasons or basis of the award. Although not specifically addressed by Section 41, it has been the position of the NASD that arbitrators are permitted under that Section to issue a statement of reasons or basis for the award and arbitrators have issued such statements in many cases.

In addition, the Section provides for arbitrators to issue a statement of reasons or basis of the award if the parties specifically so agree. Accordingly, even in situations where the arbitrators would not otherwise issue a statement accompanying the award, the arbitrators would nonetheless do so where all of the parties have specifically agreed that a statement of the reasons or basis of the award should accompany the award.

I. Sunset Provision

Section 46(h) of the proposed rule change specifies that the large and complex cases rules will remain in effect for one year following the effective date, unless the Board of Governors authorizes their modification or extension.[15]

[14] By contrast, Section 32 of the Code provides that an arbitrator may ''issue subpoenas, direct appearances of witnesses and production of documents, set deadlines for compliance, and issue any other ruling which will expedite the arbitration proceedings.'' NASD Manual, Code of Arbitration Procedure, Part III, Sec. 32 (CCH) ¶ 3732.

[15] Any such modification or extension must be filed as a proposed rule change with the Commission pursuant to section 19(b)(1) of the Act and Rule 19b–4 thereunder.

III. Comment Letters

The Lipner Letter states that there were both positive and negative aspects to the large and complex case rules, and recommended certain changes to the rule change to enhance the equitable nature of the arbitration process. NELA's comments were limited to the arbitration of employment disputes. NELA opposes the rule change in the context of employment disputes. As a general matter, NELA objects not only to the proposed rule change but to mandatory arbitration of complex employment.[16] The NELA Letter states that employment disputes typically turn on legal issues rather than factual issues. NELA believes that it is inappropriate for a panel composed of a majority of non-lawyers to decide these issues. Furthermore, the NELA Letter states that arbitration does not provide the opportunity for the development of employment law. The Commission believes that, whatever the merit of these arguments, they are not germane to the instant rule change.

The NELA Letter also states that the large and complex case rules ''are clearly designed to give the defendants all of the advantages of litigation in defending the cases while fatally disadvantaging the party with the burden of proof.'' As noted above, parties will be able to modify all provisions of Section 46 with an agreement under Section 46 (a))(2) and (a)(3) (other than the mandatory administrative hearing), and if parties do not agree upon procedures to govern the matter, than Section 46 will not govern the arbitration of the matter.

The NELA Letter also objects to the level of fees imposed upon large and complex cases. The NELA Letter states that the level of fees is exorbitant given that the employee does not have the option of going to court. The Commission notes that Section 46(a)(4) grants the Director of Arbitration the

[16] The Commission approved a proposed rule change to Sections 1, 8 and 9 of the Code in 1993 that provides that disputes, claims, or controversies arising out of the employment or termination of employment of an associated person are eligible for submission to arbitration. *See* Securities Exchange Act Release No. 32802 (Aug. 25, 1993), 58 FR 45932 (Aug. 31, 1993). That proposed rule change was prompted by two court decisions interpreting the Code so as not to cover employment disputes. The California Court of Appeals held that Section 8 of the Code did not cover employment disputes, but only covered disputes arising out of or in connection with business transactions. *Higgins* v. *Superior Court of Los Angeles County,* 1 Cal. Rptr. 2d 57 (1992). The Seventh Circuit concluded that the NASD Code of Arbitration as then drafted, did not require the arbitration of employment disputes between an NASD member and its associated person. *Farrand* v. *Lutheran Brotherhood,* 993 F.2d 1253 (7th Cir. 1993). NELA did not comment on that proposed rule change.

authority to waive forum fees and grants the arbitrators the discretion to apportion all fees and charges assessed on the parties other than hearing session deposits.

The Lipner Letter objects to Section 46(b)(8)(C), which provides that one purpose of the administrative conference is to develop a statement of the legal authorities related to the matters in dispute to be brought to the attention of the arbitrators. The Lipner Letter views this provision as transforming the arbitration process into one that is more akin to litigation. The Commission believes that this provision recognizes that legal issues are argued routinely in arbitration and that this provision may assist parties in formulating and assessing the strength of their claims. It is a reasonable approach for the NASD to adopt.

Both the NELA Letter and the Lipner Letter object to Section 46(f)(3), which permits arbitrators to rule on dispositive motions, such as motions to dismiss on any grounds, including the applicability of a statute of limitations, or motions for summary judgment. Both commenters argue that permitting such motions and the attendant legal briefing is inconsistent with the nature of the arbitration process. The Commission believes that parties should be cognizant of this feature of the large and complex case rules before they agree to arbitrate pursuant to the large and complex case rules. The Commission believes that the pamphlet will alert parties to this provision. As noted above, parties will be able to modify this provision under an agreement under Section 46 (a)(2) and (a)(3), and, if no agreement is reached, then the large and complex arbitration rules will not govern the arbitration of the matter.

The NELA Letter objects to Section 46(f)(2), which limits depositions and interrogatories to determining and preserving testimony and facts relevant to the determination of the matter, rather than for conducting discovery. NELA believes that not permitting depositions for discovery is a significant disadvantage to employees and causes the arbitration process to be skewed in favor of employers. The Commission is not unmindful of the concerns expressed by NELA. However, the Commission believes that parties may either modify these procedures through the agreement reached under Section 46 (a)(2) and (a)(3) to permit depositions for purposes of discovery, or failing agreement, may arbitrate in accordance with the rules governing arbitration elsewhere in the Code. Moreover, experience with this provision of the pilot rules can be evaluated in the event that the NASD determines to propose these rules for permanent inclusion in the Code. The Commission also intends to monitor cases arbitrated under the large and complex case rules to determine whether parties are being disadvantaged by the limited scope of discovery.

IV. Discussion and Findings

The Commission finds that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[17] because it may encourage the arbitration of large and complex cases in a manner consistent with the objective of a just, efficient and cost-effective resolution of those cases, and will provide parties with the flexibility to formulate their own procedures. The flexibility will serve the public interest by permitting parties to tailor arbitration proceedings in a manner which enhances their ability to pursue their claims.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, the File No. SR–NASD–94–10 be, and hereby is approved for a one year period beginning May 2, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–2972 Filed 2–6–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–35301; File No. SR–NYSE–95–01]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by New York Stock Exchange, Inc., Relating to Domestic Listing Standards

January 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on January 18, 1995, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[17] U.S.C. 78o–3.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is proposing amendments to its domestic listing standards. These listing standards are contained in Paragraph 102.01 of the Exchange's *Listed Company Manual*. The text of the proposed rule change is available at the Office of the Secretary, NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to create alternatives for two existing Exchange listing standards and to amend two additional standards. According to the Exchange, the NYSE already has, and intends to maintain, the highest listing requirements among U.S. markets. Current listing requirements measure, among other things, demonstrated earning power and shareholder distribution, as well as tangible net worth and market capitalization of publicly-held shares. The rule change would provide alternatives to the existing demonstrated earning power and shareholder distribution tests. In addition, the proposal would increase the existing requirements for tangible net worth and public market capitalization.

Demonstrated Earning Power

Under the Exchange's demonstrated earning power standard, the existing requirement calls for:

Demonstrated earning power—income before federal income taxes and under competitive conditions:	
Latest fiscal year	$2,500,000
Each of the preceding two fiscal years	$2,000,000